

SENATE, No. 2079

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED APRIL 25, 2016

Sponsored by:

Senator NICHOLAS P. SCUTARI

District 22 (Middlesex, Somerset and Union)

SYNOPSIS

Transfers authority to regulate bail agents from DOBI to DLPS; requires certain defendants to be eligible for monetary bail upon issuance of complaint-warrant.

CURRENT VERSION OF TEXT

As introduced.



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1 AN ACT concerning bail bond agents and pretrial release,
2 supplementing Title 17 of the Revised Statutes and Title 2C of
3 the New Jersey Statutes, and amending P.L.2014, c.31.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. (New section) All of the functions, powers, and duties
9 pertaining to the licensing and oversight of bail agents or agencies
10 as defined in section 1 of P.L.2003, c.202 (C.17:31-10), except as
11 otherwise provided, are transferred to the Department of Law and
12 Public Safety and shall be exercised by the Bail Agent Enforcement
13 Unit established pursuant to section 2 of P.L. , c. (C.)
14 (pending before the Legislature as this bill). All records,
15 equipment, and other personal property, appropriations, and any
16 unexpended balances of funds appropriated or otherwise available
17 to the Department of Banking and Insurance pertaining to the
18 licensure and oversight of bail agents and agencies subject to the
19 provisions of this act shall be transferred to the Bail Agent
20 Enforcement Unit in the Department of Law and Public Safety
21 pursuant to the "State Agency Transfer Act," P.L.1971, c.375
22 (C.52:14D-1 et seq.).

23
24 2. (New section) a. The Attorney General shall establish and
25 maintain a Bail Agent Enforcement Unit within the Department of
26 Law and Public Safety which shall be responsible for the licensing
27 and oversight of bail agents or agencies as defined in section 1 of
28 P.L.2003, c.202 (C.17:31-10).

29 b. The Bail Agent Enforcement Unit shall be empowered to
30 ensure that the methods of operation of bail agents or agencies are
31 conducted in accordance with current law and shall be authorized to
32 investigate whether a bail agent or agency has engaged in, or is
33 engaging in, any criminal act or offense under Title 2C of the New
34 Jersey Statutes or Title 17 of the Revised Statutes. In carrying out
35 its functions and duties under this act, the Bail Agent Enforcement
36 Unit shall be authorized to:

37 (1) upon obtaining a court order or warrant, inspect any premises
38 of any bail agency operating in this State and examine any record,
39 book, computer, electronic database, recording device, document,
40 account, paper, or other tangible thing in connection with any
41 investigation;

42 (2) upon obtaining a court order or warrant, seize and impound
43 any record, book, computer, electronic database, recording device,
44 document, account, paper, or other tangible thing in connection
45 with any investigation;

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

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1 (3) work in coordination with the Superintendent of State Police
2 to facilitate the arrest of any bail agent who engages in illegal
3 activity; and

4 (4) work in coordination with the Commissioner of Banking and
5 Insurance to ensure that each bail agent or agency is working in
6 accordance with all statutes and regulations relative to the
7 negotiation, solicitation or sale of bail bonds in this State.

8 c. The Bail Agent Enforcement Unit established under this
9 section shall be supervised by a chief of staff appointed by the
10 Attorney General and shall employ field investigators and
11 administrative staff to assist in the enforcement of subsection b. of
12 this section.

13 d. The powers granted to the Bail Enforcement Unit pursuant
14 to this act shall not be construed to deny a bail agent due process,
15 including as appropriate, notice and an opportunity to be heard.

16

17 3. (New section) a. For the purposes of this section, "bail agent
18 or agency" shall have the same meaning as set forth in section 1 of
19 P.L.2003, c.202 (C.17:31-10).

20 b. Following the effective date of this act, the Department of
21 Banking and Insurance shall cease issuing licenses to bail bond
22 agents and all licenses, and enforcement of licensing requirements
23 shall be conducted by the Bail Agent Enforcement Unit in
24 accordance with section 2 of P.L. , c. (C.) (pending before
25 the Legislature as this bill).

26 c. As a condition of licensure pursuant to the provisions of
27 P.L.2001, c.210 (C.17:22A-26 et seq.), a bail agent shall possess
28 and display an identification card containing the bail agent's
29 photograph, license number, and any other information deemed
30 appropriate by the Attorney General.

31 d. A license shall be issued to an applicant who:

32 (1) consents to a criminal history record background check to be
33 performed. The Bail Agent Enforcement Unit is authorized to
34 exchange fingerprint data with and receive criminal history record
35 information from the State Bureau of Identification in the Division
36 of State Police and the Federal Bureau of Investigation consistent
37 with applicable State and federal laws, rules, and regulations. The
38 applicant shall bear the cost for the criminal history record
39 background check, including all costs of administering and
40 processing the check. The Division of State Police shall promptly
41 notify the Bail Agent Enforcement Unit in the event a current or
42 prospective licensee, who was the subject of a criminal history
43 record background check pursuant to this section, is arrested for a
44 crime or offense in this State after the date the background check
45 was performed;

46 (2) satisfactorily completes a training program approved by the
47 Attorney General, which shall include, but not be limited to,
48 instruction in arrest, search and seizure, and criminal law;

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1 (3) successfully completes a written competency examination
2 approved by the Attorney General; and

3 (4) complies with any further information that the Attorney
4 General may require by regulation of the applicant.

5 e. The Bail Agent Enforcement Unit may deny the issuance of
6 a license on the basis of the criminal history background check or
7 failure to comply with the requirements set forth under subsection
8 a. of this section. The denial of licensure as a bail enforcement
9 agent under this section shall be reviewable by administrative
10 adjudication as set forth in the "Administrative Procedure Act,"
11 P.L.1968, c.410 (C.52:14B-1 et seq.).

12 f. The Bail Agent Enforcement Unit shall revoke the license of
13 any bail agent or agency if the Attorney General finds, after a
14 hearing, that the agent, agency, or any licensed or unlicensed
15 representative thereof, has:

16 (1) facilitated telephone communication via three-way telephone
17 call between any person incarcerated in a State correctional facility
18 or a county jail and a third party, except when the three-way
19 telephone call is necessary to facilitate underwriting the bail bond;

20 (2) solicited business from any person incarcerated in a State
21 correctional facility or a county jail, either directly or by means of
22 any third party; or

23 (3) compensated an unlicensed individual, either directly or
24 indirectly, for referring business to the bail agent or agency unless
25 the unlicensed individual is regularly employed by, receives a
26 salary from, and operates under the supervision of a licensed bail
27 agent.

28 g. A bail agent who was licensed by the Department of
29 Banking and Insurance prior to the effective date of this act shall be
30 entitled to a license issued by the Bail Agent Enforcement Unit and
31 shall be deemed to have complied with subsections d. and e. of this
32 section.

33

34 4. (New section) a. As used in this section, "bail agent or
35 agency" means any person or entity that solicits, negotiates, or sells
36 bail bonds, or is affiliated in any manner with the execution of bail.

37 b. In addition to any penalties imposed pursuant to section 15
38 of P.L.2001, c.210 (C.17:22A-40), a person commits a crime of the
39 fourth degree if he operates as a bail agent or agency without a
40 license in violation of section 4 of P.L.2001, c.210 (C.17:22A-29).

41

42 5. Section 1 of P.L.2014, c.31 (C.2A:162-15) is amended to
43 read as follows:

44 1. The provisions of sections 1 through 11 of P.L.2014, c.31
45 **[(C.2A:162-15 et seq.)]** (C.2A:162-15 through C.2A:162-26) shall
46 be liberally construed to effectuate the purpose of primarily relying
47 upon pretrial release by monetary or non-monetary means to
48 reasonably assure an eligible defendant's appearance in court when

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1 required, the protection of the safety of any other person or the
2 community, that the eligible defendant will not obstruct or attempt
3 to obstruct the criminal justice process, and that the eligible
4 defendant will comply with all conditions of release, while
5 authorizing the court, with respect to any first degree crime and
6 upon motion of a prosecutor, to order pretrial detention of the
7 eligible defendant when it finds clear and convincing evidence that
8 no condition or combination of conditions can reasonably assure the
9 effectuation of these goals. **【**Monetary bail may be set for an
10 eligible defendant only when it is determined that no other
11 conditions of release will reasonably assure the eligible defendant's
12 appearance in court when required.**】**

13 For the purposes of sections 1 through 11 of P.L.2014, c.31
14 (C.2A:162-15 et seq.), "eligible defendant" shall mean a person for
15 whom a complaint-warrant is issued for an initial charge involving
16 an indictable offense or a disorderly persons offense unless
17 otherwise provided in sections 1 through 11 of P.L.2014, c.31
18 (C.2A:162-15 et seq.).
19 (cf: P.L.2014, c.31, s.1)

20
21 6. Section 2 of P.L.2014, c.31 (C.2A:162-16) is amended to
22 read as follows:

23 2. a. An eligible defendant shall be bailable by monetary bail
24 immediately, following the issuance of a complaint-warrant
25 pursuant to the conditions set forth under subsection c. of this
26 section, unless the eligible defendant is arrested on a complaint-
27 warrant for a crime of the first degree, in which case the eligible
28 defendant shall be temporarily detained to allow the Pretrial
29 Services Program to prepare a risk assessment with
30 recommendations on conditions of release pursuant to section 11 of
31 P.L.2014, c.31 (C.2A:162-25) and for the court to issue a pretrial
32 release decision.

33 b. For any eligible defendant who is found by a court not to be
34 immediately bailable pursuant to subsection a. of this section, or
35 who is immediately bailable pursuant to that subsection but is
36 unable to post bail:

37 (1) Except as otherwise provided under sections 4 and 5 of
38 P.L.2014, c.31 (C.2A:162-18 and C.2A:162-19), the court, pursuant
39 to section 3 of P.L.2014, c.31 (C.2A:162-17), shall make a pretrial
40 release decision for the eligible defendant without unnecessary
41 delay, but in no case later than **【48】** 96 hours after the eligible
42 defendant's commitment to jail. The court shall consider the
43 Pretrial Services Program's risk assessment and recommendations
44 on conditions of release before making any pretrial release decision
45 for the eligible defendant.

46 (2) After considering all the circumstances, the Pretrial Services
47 Program's risk assessment and recommendations on conditions of
48 release, and any information that may be provided by a prosecutor

1 or the eligible defendant, the court, pursuant to any of the following
2 conditions as deemed appropriate by the court in its sole discretion,
3 shall order that the eligible defendant be:

4 (a) released on the eligible defendant's own recognizance **【**or on
5 execution of an unsecured appearance bond**】**; or

6 (b) released on a non-monetary condition or conditions, with the
7 condition or conditions being the least restrictive condition or
8 combination of conditions that the court determines will reasonably
9 assure the eligible defendant's appearance in court when required,
10 the protection of the safety of any other person or the community,
11 or that the eligible defendant will not obstruct or attempt to obstruct
12 the criminal justice process; or

13 (c) released on monetary bail, or modified monetary bail if bail
14 was previously set pursuant to subsection a. of this section, other
15 than an unsecured appearance bond, to reasonably assure the
16 eligible defendant's appearance in court when required, or a
17 combination of monetary bail and non-monetary conditions, to
18 reasonably assure the eligible defendant's appearance in court when
19 required, the protection of the safety of any other person or the
20 community, or that the eligible defendant will not obstruct or
21 attempt to obstruct the criminal justice process; or

22 (d) detained in jail, upon motion of the prosecutor, pending a
23 pretrial detention hearing pursuant to sections 4 and 5 of P.L.2014,
24 c.31 (C.2A:162-18 and C.2A:162-19).

25 c. A law enforcement officer shall not apply for a complaint-
26 warrant except in accordance with guidelines issued by the Attorney
27 General, and a court may not issue a complaint-warrant except as
28 may be authorized by the Rules of Court.

29 d. (1) A defendant who is charged on a complaint-summons
30 shall be released from custody and shall not be subject to the
31 provisions of sections 1 through 11 of P.L.2014, c.31 **【**(C.2A:162-
32 15 et seq.)**】** (C.2A:162-15 through C.2A:162-26).

33 (2) (a) If a defendant who was released from custody after being
34 charged on a complaint-summons pursuant to paragraph (1) of this
35 subsection is subsequently arrested on a warrant for failure to
36 appear in court when required, that defendant shall be eligible for
37 release on personal recognizance or release on bail by sufficient
38 sureties at the discretion of the court. If monetary bail was not set
39 when an arrest warrant for the defendant was issued, the defendant
40 shall have monetary bail set without unnecessary delay, but in no
41 case later than 12 hours after arrest. Pursuant to the Rules of Court,
42 if the defendant is unable to post monetary bail, the defendant shall
43 have that bail reviewed promptly and may file an application with
44 the court seeking a bail reduction, which shall be heard in an
45 expedited manner.

46 (b) If the defendant fails to post the required monetary bail set
47 by the court pursuant to this paragraph, the defendant may not be
48 detained on the charge or charges contained in the complaint-

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1 summons beyond the maximum term of incarceration or term of
2 probation supervision for the offense or offenses charged.

3 (cf: P.L.2014, c.31, s.2)

4

5 7. Section 3 of P.L.2014, c.31 (C.2A:162-17) is amended to
6 read as follows:

7 3. Except as otherwise provided under sections 4 and 5 of
8 P.L.2014, c.31 (C.2A:162-18 and C.2A:162-19) concerning a
9 hearing on pretrial detention, whenever an eligible defendant is
10 found by a court not to be immediately bailable pursuant to
11 subsection a. of section 2 of P.L.2014, c.31 (C.2A:162-16), or is
12 immediately bailable pursuant to that subsection but unable to post
13 bail, a court shall make, pursuant to this section, a pretrial release
14 decision for an eligible defendant without unnecessary delay~~], but~~
15 ~~in but in no case]~~ . A pretrial release determination shall not be
16 made later than [48] 96 hours after the eligible defendant's
17 commitment to jail.

18 a. The court shall order the pretrial release of the eligible
19 defendant on personal recognizance ~~]~~ ~~or on the execution of an~~
20 ~~unsecured appearance bond]~~ when, after considering all the
21 circumstances, the Pretrial Services Program's risk assessment ~~]~~ ~~and~~
22 ~~recommendations on conditions of release prepared pursuant to~~
23 ~~section 11 of P.L.2014, c.31 (C.2A:162-25)]~~, and any information
24 that may be provided by a prosecutor or the eligible defendant, the
25 court finds that the release would reasonably assure the eligible
26 defendant's appearance in court when required, the protection of the
27 safety of any other person or the community, and that the eligible
28 defendant will not obstruct or attempt to obstruct the criminal
29 justice process.

30 b. (1) If the court does not find, after consideration, that the
31 release described in subsection a. of this section will reasonably
32 assure the eligible defendant's appearance in court when required,
33 the protection of the safety of any other person or the community,
34 and that the eligible defendant will not obstruct or attempt to
35 obstruct the criminal justice process, the court may order the
36 pretrial release of the eligible defendant subject to the following:

37 (a) the eligible defendant shall not commit any offense during
38 the period of release;

39 (b) the eligible defendant shall avoid all contact with an alleged
40 victim of the crime;

41 (c) the eligible defendant shall avoid all contact with all
42 witnesses who may testify concerning the offense that are named in
43 the document authorizing the eligible defendant's release or in a
44 subsequent court order; and

45 (d) any one or more non-monetary conditions as set forth in
46 paragraph (2) of this subsection.

47 (2) The non-monetary condition or conditions of a pretrial
48 release ordered by the court pursuant to this paragraph shall be the

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1 least restrictive condition, or combination of conditions, that the
2 court determines will reasonably assure the eligible defendant's
3 appearance in court when required, the protection of the safety of
4 any other person or the community, and that the eligible defendant
5 will not obstruct or attempt to obstruct the criminal justice process,
6 which may include that the eligible defendant:

7 (a) remain in the custody of a designated person, who agrees to
8 assume supervision and to report any violation of a release
9 condition to the court, if the designated person is able to reasonably
10 assure the court that the eligible defendant will appear in court
11 when required, will not pose a danger to the safety of any other
12 person or the community, and will not obstruct or attempt to
13 obstruct the criminal justice process;

14 (b) maintain employment, or, if unemployed, actively seek
15 employment;

16 (c) maintain or commence an educational program;

17 (d) abide by specified restrictions on personal associations,
18 place of abode, or travel;

19 (e) report on a regular basis to a designated law enforcement
20 agency, or other agency, or pretrial services program;

21 (f) comply with a specified curfew;

22 (g) refrain from possessing a firearm, destructive device, or
23 other dangerous weapon;

24 (h) refrain from excessive use of alcohol, or any use of a
25 narcotic drug or other controlled substance without a prescription
26 by a licensed medical practitioner;

27 (i) undergo available medical, psychological, or psychiatric
28 treatment, including treatment for drug or alcohol dependency, and
29 remain in a specified institution if required for that purpose;

30 (j) return to custody for specified hours following release for
31 employment, schooling, or other limited purposes;

32 (k) be placed in a pretrial home supervision capacity with or
33 without the use of an approved electronic monitoring device. The
34 court may order the eligible defendant to pay all or a portion of the
35 costs of the electronic monitoring, but the court may waive the
36 payment for an eligible defendant who is indigent and who has
37 demonstrated to the court an inability to pay all or a portion of the
38 costs; or

39 (l) satisfy any other condition that is necessary to reasonably
40 assure the eligible defendant's appearance in court when required,
41 the protection of the safety of any other person or the community,
42 and that the eligible defendant will not obstruct or attempt to
43 obstruct the criminal justice process.

44 c. (1) **【**If the court does not find, after consideration, that the
45 release described in subsection a. or b. of this section will
46 reasonably assure the eligible defendant's appearance in court when
47 required, the**】** The court may order the pretrial release of the
48 eligible defendant on monetary bail, **【**other than an unsecured

1 appearance bond] or modified monetary bail if bail was previously
2 set pursuant to subsection a. of section 2 of P.L.2014, c.31
3 (C.2A:162-16). The court may only impose or modify monetary
4 bail pursuant to this subsection to reasonably assure the eligible
5 defendant's appearance. The court shall not impose or modify the
6 monetary bail to reasonably assure the protection of the safety of
7 any other person or the community or that the eligible defendant
8 will not obstruct or attempt to obstruct the criminal justice process,
9 or for the purpose of preventing the release of the eligible
10 defendant. Nothing in this section shall prohibit a court from
11 imposing monetary bail to assure an eligible defendant's appearance
12 in addition to non-monetary conditions if, in the court's discretion,
13 a combination of monetary bail and conditions are necessary to
14 facilitate the immediate and safe release of the defendant.

15 (2) If the eligible defendant is unable to post the monetary bail
16 imposed by the court pursuant to this subsection, and for that reason
17 remains detained in jail, the provisions of section 8 of P.L.2014,
18 c.31 (C.2A:162-22) shall apply to the eligible defendant.

19 d. (1) If the court does not find, after consideration, that the
20 release described in subsection a., b., or c. will reasonably assure
21 the eligible defendant's appearance in court when required, the
22 protection of the safety of any other person or the community, and
23 that the eligible defendant will not obstruct or attempt to obstruct
24 the criminal justice process, the court may order the pretrial release
25 of the eligible defendant using a combination of non-monetary
26 conditions as set forth in subsection b. of this section, and monetary
27 bail as set forth in subsection c. of this section.

28 (2) If the eligible defendant is unable to post the monetary bail
29 imposed by the court in combination with non-monetary conditions
30 pursuant to this subsection, and for that reason remains detained in
31 jail, the provisions of section 8 of P.L.2014, c.31 (C.2A:162-22)
32 shall apply to the eligible defendant.

33 e. For purposes of the court's consideration for pretrial release
34 described in this section, with respect to whether the particular
35 method of release will reasonably assure that the eligible defendant
36 will not obstruct or attempt to obstruct the criminal justice process,
37 this reasonable assurance may be deemed to exist if the prosecutor
38 does not provide the court with information relevant to the risk of
39 whether the eligible defendant will obstruct or attempt to obstruct
40 the criminal justice process.

41 f. If a court orders a non-monetary condition as set forth in
42 subsection b. of this section and monetary bail as set forth in
43 subsection c. of this section, and the defendant breaches only a non-
44 monetary condition, a bail agent or agency as defined in section 1
45 of P.L.2003, c.202 (C.17:31-10) shall not be liable for the forfeiture
46 of a bail bond. This subsection shall not be construed to relieve a
47 bail agent or agency from liability for the forfeiture of a bail bond
48 when a defendant willfully fails to appear in court when required.

1 g. Nothing in this section or the provisions of P.L.2014, c.31
2 shall prevent a court from imposing monetary bail, with or without
3 conditions, following a finding that a defendant previously violated
4 a condition of release on the eligible defendant's own personal
5 recognizance or a non-monetary condition of a pretrial release
6 ordered by the court.

7 (cf: P.L.2014, c.31, s.3)

8

9 8. Section 4 of P.L.2014, c.31 (C.2A:162-18) is amended to
10 read as follows:

11 4. a. (1) The court may order, before trial, the detention of an
12 eligible defendant charged with **any** a crime **],** or any offense
13 involving domestic violence as defined in subsection a. of section 3
14 of P.L.1991, c.261 (C.2C:25-19), enumerated in subsection a. of
15 section 5 of P.L.2014, c.31 (C.2A:162-19), **]** of the first degree if
16 the prosecutor seeks the pretrial detention of the eligible defendant
17 under section 5 of P.L.2014, c.31 (C.2A:162-19) and after a hearing
18 pursuant to that section the court finds clear and convincing
19 evidence that no amount of monetary bail, non-monetary conditions
20 of pretrial release or combination of monetary bail and conditions
21 would reasonably assure the eligible defendant's appearance in
22 court when required, the protection of the safety of any other person
23 or the community, and that the eligible defendant will not obstruct
24 or attempt to obstruct the criminal justice process. The court may
25 also order the pretrial detention of an eligible defendant when the
26 prosecutor moves for a pretrial detention hearing and the eligible
27 defendant fails to rebut a presumption of pretrial detention that may
28 be established for the crimes enumerated under subsection b. of
29 section 5 of P.L.2014, c.31 (C.2A:162-19).

30 (2) For purposes of ordering the pretrial detention of an eligible
31 defendant pursuant to this section and section 5 of P.L.2014, c.31
32 (C.2A:162-19) or pursuant to section 10 of P.L.2014, c.31
33 (C.2A:162-24), when determining whether no amount of monetary
34 bail, non-monetary conditions or combination of monetary bail and
35 conditions would reasonably assure the eligible defendant's
36 appearance in court when required, the protection of the safety of
37 any other person or the community, or that the eligible defendant
38 will not obstruct or attempt to obstruct the criminal justice process,
39 the court may consider the amount of monetary bail only with
40 respect to whether it will, by itself or in combination with non-
41 monetary conditions, reasonably assure the eligible defendant's
42 appearance in court when required.

43 b. Regarding the pretrial detention hearing moved for by the
44 prosecutor, except for when an eligible defendant is charged with a
45 crime set forth under paragraph (1) or (2) of subsection b. of section
46 5 of P.L.2014, c.31 (C.2A:162-19), there shall be a rebuttable
47 presumption that some amount of monetary bail, non-monetary
48 conditions of pretrial release or combination of monetary bail and

1 conditions would reasonably assure the eligible defendant's
2 appearance in court when required, the protection of the safety of
3 any other person or the community, and that the eligible defendant
4 will not obstruct or attempt to obstruct the criminal justice process.

5 c. An eligible defendant may appeal an order of pretrial
6 detention pursuant to the Rules of Court. The appeal shall be heard
7 in an expedited manner. The eligible defendant shall be detained
8 pending the disposition of the appeal.

9 d. If the court does not order the pretrial detention of an
10 eligible defendant at the conclusion of the pretrial detention hearing
11 under this section and section 5 of P.L.2014, c.31 (C.2A:162-19),
12 the court shall order the release of the eligible defendant pursuant to
13 section 3 of P.L.2014, c.31 (C.2A:162-17).

14 (cf: P.L.2014, c.31, s.4)

15

16 9. Section 5 of P.L.2014, c.31 (C.2A:162-19) is amended to
17 read as follows:

18 5. a. A prosecutor may file a motion with the court at any time,
19 including any time before or after an eligible defendant's release
20 pursuant to section 3 of P.L.2014, c.31 (C.2A:162-17), seeking the
21 pretrial detention of an eligible defendant **for**:

22 (1) any crime of the first or second degree enumerated under
23 subsection d. of section 2 of P.L.1997, c.117 (C.2C:43-7.2);

24 (2) any crime for which the eligible defendant would be subject
25 to an ordinary or extended term of life imprisonment;

26 (3) any crime if the eligible defendant has been convicted of two
27 or more offenses under paragraph (1) or (2) of this subsection;

28 (4) any crime enumerated under paragraph (2) of subsection b.
29 of section 2 of P.L.1994, c.133 (C.2C:7-2) or crime involving
30 human trafficking pursuant to section 1 of P.L.2005, c.77 (C.2C:13-
31 8) or P.L.2013, c.51 (C.52:17B-237 et al.) when the victim is a
32 minor, or the crime of endangering the welfare of a child under
33 N.J.S.2C:24-4;

34 (5) any crime enumerated under subsection c. of N.J.S.2C:43-6;

35 (6) any crime or offense involving domestic violence as defined
36 in subsection a. of section 3 of P.L.1991, c.261 (C.2C:25-19); or

37 (7) any other crime for which the prosecutor believes there is a
38 serious risk that:

39 (a) the eligible defendant will not appear in court as required;

40 (b) the eligible defendant will pose a danger to any other person
41 or the community; or

42 (c) the eligible defendant will obstruct or attempt to obstruct
43 justice, or threaten, injure, or intimidate, or attempt to threaten,
44 injure or intimidate, a prospective witness or juror **charged with a**
45 crime of the first degree.

46 b. When a motion for pretrial detention is filed pursuant to
47 subsection a. of this section, there shall be a rebuttable presumption
48 that the eligible defendant shall be detained pending trial because

1 no amount of monetary bail, non-monetary condition or
2 combination of monetary bail and conditions would reasonably
3 assure the eligible defendant's appearance in court when required,
4 the protection of the safety of any other person or the community,
5 and that the eligible defendant will not obstruct or attempt to
6 obstruct the criminal justice process, if the court finds probable
7 cause that the eligible defendant:

8 (1) committed murder pursuant to N.J.S.2C:11-3; or
9 (2) committed any crime of the first degree for which the
10 eligible defendant would be subject to an ordinary or extended term
11 of life imprisonment.

12 c. A court shall hold a hearing to determine whether any
13 amount of monetary bail or non-monetary conditions or
14 combination of monetary bail and conditions, including those set
15 forth under subsection b. of section 3 of P.L.2014, c.31 (C.2A:162-
16 17) will reasonably assure the eligible defendant's appearance in
17 court when required, the protection of the safety of any other person
18 or the community, and that the eligible defendant will not obstruct
19 or attempt to obstruct the criminal justice process.

20 d. (1) Except as otherwise provided in this subsection, the
21 pretrial detention hearing shall be held no later than the eligible
22 defendant's first appearance unless the eligible defendant, or the
23 prosecutor, seeks a continuance. If a prosecutor files a motion for
24 pretrial detention after the eligible defendant's first appearance has
25 taken place or if no first appearance is required, the court shall
26 schedule the pretrial detention hearing to take place within three
27 working days of the date on which the prosecutor's motion was
28 filed, unless the prosecutor or the eligible defendant seeks a
29 continuance. Except for good cause, a continuance on motion of the
30 eligible defendant may not exceed five days, not including any
31 intermediate Saturday, Sunday, or legal holiday. Except for good
32 cause, a continuance on motion of the prosecutor may not exceed
33 three days, not including any intermediate Saturday, Sunday, or
34 legal holiday.

35 (2) Upon the filing of a motion by the prosecutor seeking the
36 pretrial detention of the eligible defendant and during any
37 continuance that may be granted by the court, the eligible defendant
38 shall be detained in jail, unless the eligible defendant was
39 previously released from custody before trial, in which case the
40 court shall issue a notice to appear to compel the appearance of the
41 eligible defendant at the detention hearing. The court, on motion of
42 the prosecutor or sua sponte, may order that, while in custody, an
43 eligible defendant who appears to be a drug dependent person
44 receive an assessment to determine whether that eligible defendant
45 is drug dependent.

46 e. (1) At the pretrial detention hearing, the eligible defendant
47 has the right to be represented by counsel, and, if financially unable
48 to obtain adequate representation, to have counsel appointed. The

1 eligible defendant shall be afforded an opportunity to testify, to
2 present witnesses, to cross-examine witnesses who appear at the
3 hearing, and to present information by proffer or otherwise. The
4 rules concerning admissibility of evidence in criminal trials shall
5 not apply to the presentation and consideration of information at the
6 hearing.

7 (2) In pretrial detention proceedings for which there is no
8 indictment, the prosecutor shall establish probable cause that the
9 eligible defendant committed the predicate offense. A presumption
10 of pretrial detention as provided in subsection b. of this section may
11 be rebutted by proof provided by the eligible defendant, the
12 prosecutor, or from other materials submitted to the court. The
13 standard of proof for a rebuttal of the presumption of pretrial
14 detention shall be a preponderance of the evidence. If proof cannot
15 be established to rebut the presumption, the court may order the
16 eligible defendant's pretrial detention. If the presumption is rebutted
17 by sufficient proof, the prosecutor shall have the opportunity to
18 establish that the grounds for pretrial detention exist pursuant to this
19 section.

20 (3) Except when an eligible defendant has failed to rebut a
21 presumption of pretrial detention pursuant to subsection b. of this
22 section, the court's finding to support an order of pretrial detention
23 pursuant to section 4 of P.L.2014, c.31 (C.2A:162-18) that no
24 amount of monetary bail, non-monetary conditions or combination
25 of monetary bail and conditions will reasonably assure the eligible
26 defendant's appearance in court when required, the protection of the
27 safety of any other person or the community, and that the eligible
28 defendant will not obstruct or attempt to obstruct the criminal
29 justice process shall be supported by clear and convincing evidence.

30 f. The hearing may be reopened, before or after a
31 determination by the court, at any time before trial, if the court
32 finds that information exists that was not known to the prosecutor
33 or the eligible defendant at the time of the hearing and that has a
34 material bearing on the issue of whether there are conditions of
35 release that will reasonably assure the eligible defendant's
36 appearance in court when required, the protection of the safety of
37 any other person or the community, or that the eligible defendant
38 will not obstruct or attempt to obstruct the criminal justice process.
39 (cf: P.L.2014, c.31, s.5)

40

41 10. Section 8 of P.L.2014, c.31 (C.2A:162-22) is amended to
42 read as follows:

43 8. a. Concerning an eligible defendant **【subject to】** who has
44 been charged with a first degree crime and for whom pretrial
45 detention **【as】** is ordered by a court pursuant to sections 4 and 5 of
46 P.L.2014, c.31 (C.2A:162-18 and C.2A:162-19) or an eligible
47 defendant who is detained in jail due to the inability to post the

1 monetary bail imposed by the court pursuant to subsection c. or d.
2 of section 3 of P.L.2014, c.31 (C.2A:162-17):

3 (1) (a) The eligible defendant shall not remain detained in jail for
4 more than 90 days, not counting excludable time for reasonable
5 delays as set forth in subsection b. of this section, prior to the return
6 of an indictment. If the eligible defendant is not indicted within
7 that period of time, the eligible defendant shall be released from jail
8 unless, on motion of the prosecutor, the court finds that a
9 substantial and unjustifiable risk to the safety of any other person or
10 the community or the obstruction of the criminal justice process
11 would result from the eligible defendant's release from custody, so
12 that no appropriate conditions for the eligible defendant's release
13 could reasonably address that risk, and also finds that the failure to
14 indict the eligible defendant in accordance with the time
15 requirement set forth in this subparagraph was not due to
16 unreasonable delay by the prosecutor. If the court finds that a
17 substantial and unjustifiable risk to the safety of any other person or
18 the community or the obstruction of the criminal justice process
19 would result, and also finds that the failure to indict the eligible
20 defendant in accordance with the time requirement set forth in this
21 subparagraph was not due to unreasonable delay by the prosecutor,
22 the court may allocate an additional period of time, not to exceed 45
23 days, in which the return of an indictment shall occur.
24 Notwithstanding the court's previous findings for ordering the
25 eligible defendant's pretrial detention, or if the court currently does
26 not find a substantial and unjustifiable risk or finds unreasonable
27 delay by the prosecutor as described in this subparagraph, the court
28 shall order the release of the eligible defendant pursuant to section 3
29 of P.L.2014, c.31 (C.2A:162-17).

30 (b) If the eligible defendant is charged with or indicted for a
31 first degree crime on another matter resulting in the eligible
32 defendant's pretrial detention, the time calculations set forth in
33 subparagraph (a) of this paragraph for each matter shall run
34 independently.

35 (2) (a) An eligible defendant who has been indicted for a first
36 degree crime shall not remain detained in jail for more than 180
37 days on that charge following the return or unsealing of the
38 indictment, whichever is later, not counting excludable time for
39 reasonable delays as set forth in subsection b. of this section, before
40 commencement of the trial. If the trial does not commence within
41 that period of time, the eligible defendant shall be released from jail
42 unless, on motion of the prosecutor, the court finds that a
43 substantial and unjustifiable risk to the safety of any other person or
44 the community or the obstruction of the criminal justice process
45 would result from the eligible defendant's release from custody, so
46 that no appropriate conditions for the eligible defendant's release
47 could reasonably address that risk, and also finds that the failure to
48 commence trial in accordance with the time requirement set forth in

1 this subparagraph was not due to unreasonable delay by the
2 prosecutor. If the court finds that a substantial and unjustifiable
3 risk to the safety of any other person or the community or the
4 obstruction of the criminal justice process would result, and also
5 finds that the failure to commence trial in accordance with the time
6 requirement set forth in this subparagraph was not due to
7 unreasonable delay by the prosecutor, the court may allocate an
8 additional period of time in which the eligible defendant's trial shall
9 commence. Notwithstanding the court's previous findings for
10 ordering the eligible defendant's pretrial detention, or if the court
11 currently does not find a substantial and unjustifiable risk or finds
12 unreasonable delay by the prosecutor as described in this
13 subparagraph, the court shall order the release of the eligible
14 defendant pursuant to section 3 of P.L.2014, c.31 (C.2A:162-17).
15 Notwithstanding any other provision of this section, an eligible
16 defendant shall be released from jail pursuant to section 3 of
17 P.L.2014, c.31 (C.2A:162-17) after a release hearing if, two years
18 after the court's issuance of the pretrial detention order for the
19 eligible defendant, excluding any delays attributable to the eligible
20 defendant, the prosecutor is not ready to proceed to voir dire or to
21 opening argument, or to the hearing of any motions that had been
22 reserved for the time of trial.

23 (b) (i) For the purposes of this paragraph, a trial is considered to
24 have commenced when the court determines that the parties are
25 present and directs them to proceed to voir dire or to opening
26 argument, or to the hearing of any motions that had been reserved
27 for the time of trial.

28 (ii) The return of a superseding indictment against the eligible
29 defendant shall extend the time for the trial to commence.

30 (iii) If an indictment is dismissed without prejudice upon motion
31 of the eligible defendant for any reason, and a subsequent
32 indictment is returned, the time for trial shall begin running from
33 the date of the return of the subsequent indictment.

34 (iv) A trial ordered after a mistrial or upon a motion for a new
35 trial shall commence within 120 days of the entry of the order of the
36 court. A trial ordered upon the reversal of a judgment by any
37 appellate court shall commence within 120 days of the service of
38 that court's trial mandate.

39 (c) If the eligible defendant is indicted for a first degree crime
40 on another matter resulting in the eligible defendant's pretrial
41 detention, the time calculations set forth in this paragraph for each
42 matter shall run independently.

43 b. (1) The following periods shall be excluded in computing
44 the time in which a case shall be indicted or tried:

45 (a) The time resulting from an examination and hearing on
46 competency and the period during which the eligible defendant is
47 incompetent to stand trial or incapacitated;

1 (b) The time from the filing to the disposition of an eligible
2 defendant's application for supervisory treatment pursuant to
3 N.J.S.2C:36A-1 or N.J.S.2C:43-12 et seq., special probation
4 pursuant to N.J.S.2C:35-14, drug or alcohol treatment as a condition
5 of probation pursuant to N.J.S.2C:45-1, or other pretrial treatment
6 or supervisory program;

7 (c) The time from the filing to the final disposition of a motion
8 made before trial by the prosecutor or the eligible defendant;

9 (d) The time resulting from a continuance granted, in the court's
10 discretion, at the eligible defendant's request or at the request of
11 both the eligible defendant and the prosecutor;

12 (e) The time resulting from the detention of an eligible
13 defendant in another jurisdiction provided the prosecutor has been
14 diligent and has made reasonable efforts to obtain the eligible
15 defendant's presence;

16 (f) The time resulting from exceptional circumstances
17 including, but not limited to, a natural disaster, the unavoidable
18 unavailability of an eligible defendant, material witness or other
19 evidence, when there is a reasonable expectation that the eligible
20 defendant, witness or evidence will become available in the near
21 future;

22 (g) On motion of the prosecutor, the delay resulting when the
23 court finds that the case is complex due to the number of defendants
24 or the nature of the prosecution;

25 (h) The time resulting from a severance of codefendants when
26 that severance permits only one trial to commence within the time
27 period for trial set forth in this section;

28 (i) The time resulting from an eligible defendant's failure to
29 appear for a court proceeding;

30 (j) The time resulting from a disqualification or recusal of a
31 judge;

32 (k) The time resulting from a failure by the eligible defendant to
33 provide timely and complete discovery;

34 (l) The time for other periods of delay not specifically
35 enumerated if the court finds good cause for the delay; and

36 (m) Any other time otherwise required by statute.

37 (2) The failure by the prosecutor to provide timely and complete
38 discovery shall not be considered excludable time unless the
39 discovery only became available after the time set for discovery.

40 (cf: P.L.2014, c.31, s.8)

41
42 11. Section 11 of P.L.2014, c.31 (C.2A:162-25) is amended to
43 read as follows:

44 11. a. The Administrative Director of the Courts shall establish
45 and maintain a Statewide Pretrial Services Program which shall
46 provide pretrial services to effectuate the purposes of sections 1
47 through 11 of P.L.2014, c.31 **[(C.2A:162-15 et seq.)]** (C.2A:162-
48 15 through C.2A:162-26).

1 b. The Pretrial Services Program shall, **【**after an eligible
2 defendant is temporarily detained pursuant to subsection a. of
3 section 2 of P.L.2014, c.31 (C.2A:162-16)**】** following the issuance
4 of a complaint-warrant for a defendant found not to be immediately
5 bailable pursuant to subsection a. of section 2 of P.L.2014, c.31
6 (C.2A:162-16), conduct a risk assessment on that eligible defendant
7 for the purpose of making recommendations to the court concerning
8 an appropriate pretrial release decision, including whether the
9 eligible defendant shall be: released on the eligible defendant's own
10 personal recognizance **【**or on execution of an unsecured appearance
11 bond**】**; released on a non-monetary condition or conditions as set
12 forth under subsection b. of section 3 of P.L.2014, c.31 (C.2A:162-
13 17); released **【**on monetary**】** upon execution of a bail bond or
14 modified bail bond if bail was previously set pursuant to subsection
15 a. of section 2 of P.L.2014, c.31 (C.2A:162-16), other than an
16 unsecured appearance bond; released on a combination of monetary
17 bail and non-monetary conditions set forth under section 3 of
18 P.L.2014, c.31 (C.2A:162-17); or any other conditions necessary to
19 effectuate the purposes of sections 1 through 11 of P.L.2014, c.31
20 **【**(C.2A:162-15 et seq.)**】** (C.2A:162-15 through C.2A:162-26. The
21 risk assessment shall be completed and presented to the court so
22 that the court can, without unnecessary delay, but in no case later
23 than **【**48**】** 96 hours after the eligible defendant's commitment to
24 jail, make a pretrial release decision on the eligible defendant
25 pursuant to section 3 of P.L.2014, c.31 (C.2A:162-17).

26 c. The pretrial risk assessment shall be conducted using a risk
27 assessment instrument approved by the Administrative Director of
28 the Courts that meets the requirements of this subsection.

29 (1) The approved risk assessment instrument shall be objective,
30 standardized, and developed based on analysis of empirical data and
31 risk factors relevant to **【**the**】** an eligible defendant's risk of failure
32 to appear in court when required and the defendant's danger to the
33 community while on pretrial release and which may include
34 consideration of the factors set forth in sections 3 and 6 of
35 P.L.2014, c.31 (C.2A:162-17 and C.2A:162-20). The risk
36 assessment instrument shall not be required to include factors
37 specifically pertaining to the risk for obstructing or attempting to
38 obstruct the criminal justice process.

39 (2) The approved risk assessment instrument shall gather
40 demographic information about the eligible defendant including, but
41 not limited to, race, ethnicity, gender, financial resources, and
42 socio-economic status. Recommendations for pretrial release shall
43 not be discriminatory based on race, ethnicity, gender, or socio-
44 economic status.

45 d. In addition to the pretrial risk assessments made pursuant to
46 this section, the Pretrial Services Program shall monitor appropriate
47 eligible defendants released on conditions as ordered by the court.

48 (cf: P.L.2014, c.31, s.11)

1 must undergo a criminal history record background check. The Bail
2 Agent Enforcement Unit is given the authority to revoke the license
3 of a bail agent under certain conditions. Bail agents licensed prior
4 to the bill's effective date would be entitled to a license issued by
5 the Bail Agent Enforcement Unit and would be deemed in
6 compliance with the education and criminal history requirements
7 established by the bill.

8 The bill also makes it a crime to operate as a bail agent without a
9 license. Under current law, a bail agent is prohibited from selling,
10 soliciting, or negotiating a bail bond unless he or she is licensed to
11 do so. In addition, current law provides for civil penalties that may
12 be imposed against a person who performs these acts without the
13 required license. Under the provisions of this bill, a person
14 commits a crime of the fourth degree if he or she operates as a bail
15 agent or agency without a license. This penalty is to be imposed in
16 addition to any civil penalties imposed under current law. Crimes
17 of the fourth degree are punishable by up to 18 months
18 imprisonment, a fine of up to \$10,000, or both.

19 In addition, this bill makes several changes to P.L.2014, c.31,
20 which implemented a recently approved constitutional amendment
21 providing for pretrial detention of certain criminal defendants. (see
22 N.J. Const. (1947), Article I, paragraph 11).

23 Specifically, the bill establishes that defendants only charged
24 with a crime of the first degree may be detained prior to trial and
25 grants defendants charged with lesser offenses the initial option of
26 being released on monetary bail following the issuance of a
27 complaint-warrant. The bill also extends the time period from 48
28 to 96 hours during which a court is required to make a pretrial
29 release determination for defendants who are ineligible for
30 immediate release.

31 The bill also removes an eligible defendant's ability to be
32 released on an unsecured appearance bond. Unsecured bonds are
33 generally executed when a defendant is released without posting
34 cash or collateral. Under the bill, an eligible defendant may still be
35 released on his or her own recognizance as provided by current law.

36 In addition, the bill allows an eligible defendant to be released on
37 monetary bail if a court finds that the defendant has previously
38 violated non-monetary release conditions or conditions imposed
39 when released on personal recognizance. The bill provides that bail
40 agents are to be liable for the forfeiture of a bail bond resulting
41 from an eligible defendant's violation of non-monetary conditions.

42 Under P.L.2014, c.31, an eligible defendant charged with certain
43 crimes is required to be temporarily detained so that the Pretrial
44 Services Program is able to prepare a risk assessment with
45 recommendations on conditions of release and for the court to issue
46 a pretrial release decision. Currently, defendants who commit the
47 following crimes are eligible for pretrial detention: (1) a crime of
48 the first or second degree enumerated under subsection d. of section

1 2 of P.L.1997, c.117 (C.2C:43-7.2), part of the State’s “No Early
2 Release Act”; (2) a crime for which the eligible defendant would be
3 subject to an ordinary or extended term of life imprisonment; (3)
4 any crime, if previously convicted of two or more crimes described
5 in categories (1) or (2); (4) any criminal sexual offense enumerated
6 under paragraph (2) of subsection b. of section 2 of P.L.1994, c.133
7 (C.2C:7-2) or crime involving human trafficking pursuant to section
8 1 of P.L.2005, c.77 (C.2C:13-8) or P.L.2013, c.51 (C.52:17B-237 et
9 al.) when the victim is a minor, or the crime of endangering the
10 welfare of a child under N.J.S.2C:24-4; (5) any crime that imposes
11 a mandatory minimum term of imprisonment and parole
12 ineligibility, due to the use or possession of a firearm while in the
13 course of committing or attempting to commit the crime, as set
14 forth in subsection c. of N.J.S.2C:43-6, part of the Graves Act
15 (P.L.1981, c.31); (6) any crime or offense involving domestic
16 violence as defined in subsection a. of section 3 of P.L.1991, c.261
17 (C.2C:25-19); and (7) any other crime for which the prosecutor
18 believes there is a serious risk that the eligible defendant would not
19 appear in court, would pose a danger to another person or the
20 community, or would obstruct or attempt to obstruct justice or
21 threaten, injure, or intimidate a prospective witness or juror.

22 Because of the financial burden that may be placed on the
23 Pretrial Services Program, which is required to conduct a risk
24 assessment of individuals charged with these crimes, the bill limits
25 pretrial detention to defendants charged with a crime of the first
26 degree. In addition, this bill establishes that monetary bail is the
27 initial option for release, making all eligible defendants
28 immediately bailable, except for defendants charged with a crime of
29 the first degree or defendants who are unable to post bail.